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FILE:

WAC 05 073 51874

Office: CALIFORNIA SERVICE CENTER

Date: JUN 19 2006

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a health care facility. It seeks to employ the beneficiary permanently in the United States as a physician pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. Upon reviewing the petition, the director determined that the job offer portion of the Form ETA-750A did not require an advanced degree professional.

On appeal, the petitioner urges that the labor certification be read as a whole. As will be discussed in more detail below, we find that the director should have considered the four years of residency “training” required on the labor certification as experience.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states, in pertinent part: “A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” *Id.*

The regulation at 8 C.F.R. § 204.5(k)(4) provides that the job offer portion of the Form ETA-750A “must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.”

The key to determining the job qualifications is found in item 14 on Form ETA-750 Part A. This section of the application for alien labor certification, “Offer of Employment,” describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education: 5 years of college, Bachelor of Medicine and Surgery

Training: 4 years Residency Training

Experience: 1 year in the Job Offered

The petitioner listed residency under training, not experience in a related occupation. The regulation at 8 C.F.R. § 204.5(k)(2), quoted above, provides that the equivalent of an advanced degree is a bachelor's degree plus five years of progressive "*experience* in the specialty." (Emphasis added.) While the director's decision not to consider the residency, listed as "training" by the petitioner, as "experience in the specialty" is understandable, we are satisfied that a resident physician is gaining on-the-job experience in his specialty. Thus, we are satisfied that the labor certification, read as a whole, requires a bachelor's degree plus five years of progressive experience, four years as a resident physician and one year as a physician.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.